

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 11,865

IN THE MATTER OF:

Served February 27, 2009

Petition of TRANSCOM, INC.,)	Case No. MP-09-034
for Confidential Treatment of)	
Contract Tariffs)	

This matter is before the Commission on the petition of Transcom, Inc., Carrier No. 582, for a rule or ruling declaring contract tariffs confidential.

I. BACKGROUND

Transcom was granted operating authority in 2000, but the issuance of a certificate of authority was expressly made contingent on applicant filing additional documents.¹ Transcom failed to file the necessary documents in a timely manner, thereby voiding the Commission's approval.² Transcom reapplied in 2005 and was determined to have knowingly and willfully violated the Compact in the intervening years by operating government contracts without WMATC authority, two of the three contracts Transcom now seeks to suppress.³

Transcom's second application was conditionally approved in 2006 over the protest of Executive Technology Solutions, L.L.C., WMATC Carrier No. 985. The Commission found that Transcom had demonstrated a likelihood of future compliance with the Compact notwithstanding the prior violations.⁴

During the course of the second application, Transcom filed a motion seeking confidential treatment of documents that it submitted to the Commission in cooperation with the Commission's investigation of Transcom's prior illegal operations, including Transcom's government contracts. That motion was denied on the ground that the contracts and other documents were integral to the Commission's finding of wrongdoing and assessment of civil forfeiture.⁵ Transcom did not seek reconsideration of that ruling within the thirty days permitted under the Compact. The second application was subsequently

¹ See *In re Transcom, Inc.*, No. AP-00-81, Order No. 6053 (Dec. 4, 2000) (conditionally granting Certificate No. 582).

² See *id.* (grant of authority void upon applicant's failure to timely satisfy conditions of issuance); Commission Regulation No. 66 (failure to comply with conditions of grant within 180 days voids approval).

³ *In re Transcom, Inc.*, No. AP-05-113, Order No. 9907 (Sept. 13, 2006).

⁴ *In re Transcom, Inc.*, No. AP-05-113, Order No. 10,114 (Nov. 30, 2006).

⁵ *Id.*

voided when Transcom failed to satisfy the conditions of the grant within the 180 days permitted under Regulation No. 66.⁶

Transcom filed a third application in 2007. That application was conditionally approved in 2007, over the protest of Executive Technology Solutions, L.L.C., WMATC Carrier No. 985, and Shirlington Limousine & Transportation, Inc., WMATC No. 259.⁷ Transcom timely satisfied the conditions of the third approval, including the filing of Transcom's government contract tariffs, but only after a finding that a new government contract operated by Transcom in the interim without the requisite WMATC authority was not done so knowingly and willfully in violation of the Compact.⁸ Transcom did not request confidential treatment for any of the contract tariffs it filed during that proceeding.

In the petition before us, Transcom asserts that its tariffs contain confidential "economic data" including Transcom's "hourly rates" and "period of use".

II. THE COMPACT'S TARIFF REQUIREMENTS

Article XI, Section 14, of the Compact provides as follows.

(a) Each carrier shall file with the Commission, publish, and keep available for public inspection tariffs showing --

"(i) fixed-rates and fixed-fares for transportation subject to this Act; and

"(ii) practices and regulations including those affecting rates and fares, required by the Commission.

(b) Each effective tariff shall--

(i) remain in effect for at least 60 days from its effective date, unless the Commission orders otherwise; and

(ii) be published and kept available for public inspection in the form and manner prescribed by the Commission.

(c) A carrier may not charge a rate or fare for transportation subject to this Act other than the applicable rate or fare specified in a tariff filed by the carrier under this Act and in effect at the time.

Under Regulation No. 55, a carrier must file a general tariff if it offers standardized service at universally applicable rates.⁹ A carrier must file a contract tariff if it offers tailored service on a continuing basis at negotiated rates.¹⁰

⁶ *In re Transcom, Inc.*, No. AP-05-113, Order No. 10,638 (July 18, 2007).

⁷ *In re Transcom, Inc.*, No. AP-07-192, Order No. 11,040 (Dec. 27, 2007).

⁸ *Id.* at 7-9.

⁹ Regulation No. 55-07; *In re Washington, D.C. Jitney Ass'n, Inc.*, No. AP-95-26, Order No. 4795 at 4 (Mar. 15, 1996).

¹⁰ Regulation No. 55-08; Order No. 4795 at 4.

III. TRANSCOM'S ARGUMENT

As noted above, Transcom asserts that its tariffs contain confidential "economic data" including Transcom's "hourly rates" and "period of use". A review of Transcom's three contract tariffs reveal that the only "economic data" therein consists of Transcom's prices and extended totals.

Transcom acknowledges that the Commission issued several rulings in the mid to late 1970s according confidential status to certain contract tariffs filed with the Commission¹¹ and that the Commission later overruled those decisions in General Order No. 20, served November 21, 1979.¹²

General Order No. 20 held that "all tariffs and contracts be matters of public record, open to inspection" on the ground that

confidentiality of such matters is anti-competitive, serves to deter an effective bidding process, and is contrary to the findings made in Order No. 2004, served June 20, 1979, adopting Regulation No. 70. In addition, the involved contracts normally are entered into for the benefit of interested third parties -- the persons actually using the transportation service. Such persons should have access to the pertinent information specifying the terms of the agreement between the carrier and the contracting party.

General Order No. 20.

Transcom argues that "the assertion in General Order No. 20 that confidentiality is 'anti-competitive' is simply nothing more than an opinion without support or analysis." Transcom cites *MCI Worldcom v. General Servs. Admin.*, 153 F. Supp. 2d 28 (D.D.C. 2001), and *National Parks & Conservation Ass'n v. Morton*, 498 F.2d 765 (D.C. Cir. 1974), for the contrary proposition that releasing such information to the public is anti-competitive. The decisions cited by Transcom do not support the relief requested for two reasons.

First, the decisions cited by Transcom rest on the courts' review of agency action under Exemption 4 of the Freedom of Information Act (FOIA). FOIA applies to federal agencies.¹³ The

¹¹ See *In re Central Delivery Serv., Inc.*, No. AP-78-32, Order No. 1892 (Sept. 29, 1978); *In re Omnibus Corp.*, No. 380, Order No. 1694 (May 19, 1977); *In re Rehab Trans., Inc.*, No. 300, Order No. 1526 (Mar. 30, 1976); *In re Central Delivery Serv., Inc.*, No. 271, Order No. 1432 (May 27, 1975); *In re Yellow Cab d/b/a/ All States Limo. Serv.*, No. 270, Order No. 1431 (May 27, 1975).

¹² *In re Statement of Policy*, Gen. Order No. 20 (Nov. 21, 1979).

¹³ 5 U.S.C. 551(1).

Commission is not a federal agency.¹⁴ Unit pricing information is not considered confidential under FOIA Exemption 4, in any event.¹⁵

Second, the purpose of FOIA is to make agency operations transparent to the public. The purpose of the Compact's tariff requirement is to make carrier operations transparent to the public.

Issuing a ruling or adopting a regulation that exempts contract tariffs from disclosure by the Commission would have no effect unless the rule or ruling also exempted carriers from the obligation to publish their rates and make them available to the public. An agency, however, is not free to place its own interpretation on an unambiguous provision of its statute,¹⁶ and although the Commission's regulations differentiate between contract tariffs and general tariffs, the Compact does not. Hence, carriers must publish their contract tariffs and make them available to the public just as they must do with their general tariffs. This prevents carriers from engaging in undue discrimination and adopting unduly preferential rates.¹⁷

IV. CONCLUSION

We find that the relief requested by Transcom would be contrary to the requirement in Article XI, Section 14, of the Compact that carriers publish their tariffs and keep them available for public inspection.

THEREFORE, IT IS ORDERED that the petition of Transcom Inc. for Amendment or Repeal of WMATC Policy Regarding Confidential Business Information is DENIED.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS CHRISTIE AND BRENNER:



William S. Morrow, Jr.
Executive Director

¹⁴ *Old Town Trolley Tours v. Wash. Metro. Area Transit Comm'n*, 129 F.3d 201, 204 (D.C. Cir. 1997).

¹⁵ *Acumenics Research & Tech. v. United States Dep't of Justice*, 843 F.2d 800 (4th Cir. Va. 1988).

¹⁶ *Chevron v. NRDC*, 467 U.S. 837 (1984).

¹⁷ See Compact, art. XI, §16 (prohibiting unduly discriminatory and unduly preferential rates).